

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 637 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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UNION OF INDIA THRO'DIVISIONALENGINEER & 2 ORS.

Versus

DAXABEN NANALAL TRIVEDI

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Appearance:

MR BI MEHTA for Petitioners

MR PC KAVINA for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/01/2000

ORAL JUDGEMENT

#. Challenge has been made by petitioner in this revision application to the order of Jangam Warrant dated 3.10.98 issued by Civil Judge (S.D.), Amreli, below ex.1 in Regular Execution Petition No.41 of 1997.

#. The facts of the case in brief are that the plaintiff-respondent filed Regular Civil Suit No.22 of 1983 in the court of Civil Judge (S.D.), Amreli. That suit came to be decreed by the trial court on 29th September 1984. Under that decree, the petitioners were directed to give appointment to the plaintiff-respondent on the post of Telecom Office Assistant. This decree was challenged by petitioner by filing First Appeal. On formation of the Central Administrative Tribunal, that Appeal was transferred to the Tribunal. On 15th December, 1987, the Tribunal decided that Appeal and the relevant part of the judgment of the Tribunal reads as under:

The respondent/plaintiff is entitled to be selected for training and subject to her passing it successfully, to an order of appointment unless there is any one in the select list prepared by the defendant who has secured more marks than 62.5% and has not been offered such an appointment so that she is not put to any disadvantage compared to others in the select list. This position should be ascertained vis-a-vis the respondent within a period of three months from the date of this order and necessary instructions to send her for training or explaining how the matter stands be issued by the appellant-defendants. In the event of her being selected and appointed in terms stated above she would enjoy the seniority vis-a-vis others in the select list as if she had been selected along with them.

In the light of the above observation and directions, we quash and set aside the order of the learned Judge dated 29.9.1984 in respect of declaring the letter of defendant at ex.86 and the select list prepared by the defendant as null and ineffective and confirm the judgment and decree passed by the learned Judge with the aforesaid direction and notification. Appeal partly allowed. No order as to costs.

#. It is not in dispute that after this judgment of the Tribunal the plaintiff-respondent was sent for training and on successful completion of training she was given appointment also. That has been done in the year 1988. on 27.1.97 after giving of appointment by petitioner to her, the plaintiff-respondent put the order of the Tribunal for execution which application was registered as Regular Execution Petition No.41 of 1997. On 3rd

October 1998, the Executing Court issued Jangam Warrant. In the execution petition, the plaintiff-respondent prayed that she is entitled to fixation of salary by adding seven increments in the time pay-scale and for amount of Rs.34,917/=.

#. The learned counsel for the petitioner contended that Jangam Warrant has been issued by the executing court without giving any notice to the respondent. Secondly it is contended that otherwise also, the decree stood satisfied in the year 1988 after the plaintiff-respondent was given appointment and this decree could not have been put in execution. Lastly it is contended that otherwise also, the judgment of the Tribunal is very clear and it has not conferred any right to the plaintiff-respondent for grade increments etc.

#. On the other hand, the learned counsel for the plaintiff-respondent contended that Jangam Warrant has been issued in accordance with the direction of the Tribunal. He has read out the operative part of the judgment of the Tribunal during the course of his arguments. However, he submits that in case Jangam Warrant is issued without notice to the petitioner, the matter may be remanded back for decision after hearing the parties.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. As on merits, this revision application deserves to be accepted, I do not find it to be appropriate to remand the matter for decision after hearing the petitioner by the executing court. From the operative part of the judgment of the Tribunal, I am satisfied that the Tribunal has not conferred any benefits upon the petitioner for the increments etc. The Tribunal is very clear in its order and it is made very specific that in the event of the respondent-plaintiff being selected and appointed she would enjoy seniority over others in the select list as if she has been selected along with them, so the Tribunal has only given the benefit of seniority to the plaintiff-respondent. This appointment of the plaintiff-respondent has been delayed no doubt but only seniority benefits were given to the plaintiff-respondent by the Tribunal. The learned counsel for the respondent contended that when the seniority has been given, the plaintiff-respondent is entitled for all grade increments. In his submission, appointment of plaintiff-respondent relates back to the date on which the other persons were selected. I do not find any

substance in this contention. This cannot be spelled out from the order of the Tribunal. The order of the Tribunal is very clear and what benefits are to be conferred have very specifically been stated and therein now what the learned counsel for the plaintiff-respondent contends cannot be read. In case this contention is accepted then in the judgment of the Tribunal, this Court has to read much more relief than what the Tribunal has very specifically not granted. The benefits of seniority are only being granted and that have been granted. The claim of the plaintiff-respondent for grade increments from the date from which she has been given seniority is wholly misconceived and ill-advised. The learned executing court has gone beyond the judgment of the Tribunal, which is not the jurisdiction of the executing court. The reliefs for which the plaintiff-respondent was found entitled by the Tribunal have already been given to her by petitioners. The executing court has no jurisdiction to confer upon the plaintiff-respondent the benefits more than what have been granted in the decree. In case the order impugned is allowed to stand, it will certainly occasion failure of justice and will cause irreparable injury to the petitioner for the reason that they have to give benefits to the plaintiff-respondent which the Tribunal has not given to her.

#. In the result, this civil revision application succeeds and the same is allowed and the order of Jangam Warrant dated 3.10.98 issued by Civil Judge (S.D.), Amreli, below ex.1 in Regular Execution Petition No.41 of 1997 is quashed and set aside and the Execution Petition No.41 of 1997 is dismissed. No order as to costs.

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[sunil]